

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

MIGUEL QUILES DIAZ, et al.,

Plaintiff,

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

Civil No. 04-1099(JAF)

O R D E R

_____Defendants Deya and Helevator move to dismiss, arguing that Plaintiffs's claim is premature because, in violation of 11 L.P.R.A. § 32, they failed to wait ninety days after Plaintiff's final discharge from the State Insurance Fund before filing the present complaint. Docket Document No. 40.

Section 32 provides, in relevant part, that:

When an injured . . . employee . . . may be entitled to institute an action for damages against a third party in cases where the State Insurance Fund . . . is obliged to compensate in any manner or to furnish treatment, the Manager of the State Insurance Fund shall subrogate himself in the rights of the . . . employee . . . and may institute proceedings against such third party in the name of the injured workman or employee or his beneficiaries, within the ninety (90) days following the date of the final and enforceable decision of the case [T]he injured employee may [not] institute any action . . . until after the expiration of ninety days from the date of the final and enforceable decision of the case by the Manager of the State Insurance Fund.

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1 11 L.P.R.A. § 32.

2 Defendants argue that because Plaintiffs filed the present claim
3 on June 28, 2004, and the State Insurance Fund's final discharge was
4 still not final as of November 17, 2004 (when Defendants filed their
5 motion to dismiss), the present claim is premature and should be
6 dismissed without prejudice. Docket Document No. 40.

7 In rebuttal, Plaintiffs claim that only the State Insurance Fund
8 Manager, not a third-party defendant, "may demand an annulment of a
9 premature action in favor of its right of subrogation." Docket
10 Document No. 41. Plaintiffs further aver that in light of the
11 substantial resources already invested in the present case, and in
12 the interest of judicial economy, we should deny Defendants' motion
13 to dismiss. Id.

14 This court has consistently interpreted § 32 as rendering claims
15 filed before ninety days have lapsed as "voidable, instead of void."
16 Rivera Escobar v. Parke Davis & Co., 671 F. Supp. 895, 897 (D.P.R.
17 1987); see also Fremaint v. Ford Motor Co., 258 F. Supp. 2d 24, 32-33
18 (D.P.R. 2003); Perez Bonilla v. Mann Holly Sales & Service, Inc., 729
19 F. Supp. 1410 (D.P.R. 1990). While premature actions frequently "are
20 permitted to go forward," we have declined to interpret § 32 as
21 denying third-party defendants the ability to seek dismissal under
22 its provisions. Rivera Escobar, 671 F. Supp. at 897 (finding

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1 "misguided" the contention that third party defendants "have no
2 standing to raise the issue of prematurity").¹

3 _____In the past, we have dismissed premature claims to avoid
4 duplicative proceedings. Rivera Escobar, 671 F. Supp. at 897.
5 Plaintiffs were scheduled for a hearing with the Industrial
6 Commission on November 29, 2004. The hearing's outcome, as well as
7 any subsequent appeal process, are both germane to settling the issue
8 of whether this case should be dismissed for prematurity. Before
9 making a final determination, then, we request that Plaintiffs submit
10 a brief memorandum summarizing the present status of the State
11 Insurance Fund proceedings.

12 Plaintiffs must submit a memorandum in compliance with this
13 order **within five (5) working days**.

14 **IT IS SO ORDERED.**

15 San Juan, Puerto Rico, this 2nd day of June, 2005.

16 S/José Antonio Fusté
17 JOSE ANTONIO FUSTE
18 Chief U. S. District Judge

¹We have, however, limited the right to demand annulment. Fremaint, 258 F. Supp. 2d at 33 ("[O]nly the Fund Manager may demand an annulment of a premature action in favor of its right of subrogation."); Rivera Escobar, 671 F. Supp. at 897 ("The declaration of nullity would unduly protect the third party, when what is inferred from our statute is the desire to protect the Fund's right to subrogation."); see also Perez Bonilla, 729 F. Supp. at 1411 (distinguishing nullification from dismissal).